

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 MARK F. GUTIERREZ,
5 Plaintiff,

6 v.

7 ANDREW SAUL, Acting Commissioner of
8 Social Security,¹
9 Defendant.

Case No. 2:17-cv-02365-MMD-EJY

ORDER

10 Plaintiff Mark F. Gutierrez (“Plaintiff”) seeks judicial review of the final decision of the
11 Commissioner of the Social Security Administration denying his application for disability insurance
12 and supplemental security income under Title II and Title XVI of the Social Security Act,
13 respectively. The Court has reviewed the parties’ briefings and the Administrative Record (“AR”)
14 in this matter.

15 The Court issues this Order for the purpose of obtaining clarification from Plaintiff’s treating
16 physician, Dr. Akindele Kolade, regarding two issues that appear to be clerical errors based on the
17 totality of the information otherwise provided by Dr. Kolade. First, Dr. Kolade submitted a Mental
18 Impairment Questionnaire in which he checked “no” in response to a question asking whether
19 Plaintiff’s “impairment lasted or [is] expected to last at least twelve months.” AR 513. Given Dr.
20 Kolade’s opinions regarding Plaintiff’s mental health, this response appears to be in error.

21 Second, Dr. Kolade checked a box indicating Plaintiff’s abilities, when carrying out “very
22 short and simple instructions” and “[m]aintain[ing] attention for two hour segment[s],” were
23 “seriously limited, but not precluded” for unskilled work. AR 510–11 (emphasis added). On the
24 same form, Dr. Kolade checked a box indicating Plaintiff’s abilities when carrying out “detailed
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26 ¹ Andrew Saul is the current Commissioner of Social Security and is automatically substituted as a party pursuant
27 to Fed. R. Civ. P. 25(d). *See also* 42 U.S.C. § 405(g) (“Any action instituted in accordance with this subsection shall
28 survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any
vacancy in such office.”).

1 instructions” and “[u]nderstand[ing] and remember[ing] detailed instructions” were only “[l]imited
2 but satisfactory” for more demanding semiskilled and skilled work. *Id.* (emphasis added).

3 The Court seeks clarification from Dr. Kolade regarding these two issues so that it may
4 promptly finalize its Report and Recommendation regarding Plaintiff’s Motion to Remand.

5 Accordingly,

6 IT IS HEREBY ORDERED that within fourteen (14) days Plaintiff, through counsel, shall
7 obtain a letter or, if possible, declaration by Dr. Akindele Kolade clarifying (1) whether Plaintiff’s
8 impairment lasted or is expected to last at least twelve months, and (2) the level of abilities and
9 aptitudes Plaintiff possesses when carrying out (a) unskilled work, as well as (b) semiskilled and
10 skilled work as discussed above.

11 DATED this 15th day of January, 2020.

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14 ELAYNA J. YOUCHAH
15 UNITED STATES MAGISTRATE JUDGE
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